

## INTRADEPARTMENTAL CORRESPONDENCE

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**TO:** The Honorable Board of Police Commissioners

**FROM:** Chief of Police

**SUBJECT:** OFFICER INVOLVED SHOOTING FID NO. 016-19

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Honorable Members:

The following is my review, analysis and findings for Officer Involved Shooting (OIS), Force Investigation Division (FID) No. 016-19. A Use of Force Review Board (UOFRB) was convened on this matter on January 23, 2020. I have reviewed and adopted the recommendations from the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

### SUMMARY<sup>1</sup>

On Monday, April 22, 2019, at approximately 0639 hours, Officers B. Tahuite, Serial No. 42780, and A. Do, Serial No. 43209, Southeast Patrol Division, were dressed in full uniform and driving a marked black and white police vehicle. The officers were at Southeast Community Police Station completing administrative duties as they were nearing the end of their shift when Communications Division (CD) broadcast, "*Southeast Units, 415 Man with a Gun at Gardena and Denver, Gardena and Denver, near the intersection. The suspect is the son, male Hispanic 35 years, white shirt and tan pants under the influence of narcotics. Code Three, Incident 818, in RD 1881.*" Officer Do requested CD assign them the radio call and responded Code Three to Gardena Boulevard and Denver Avenue in Southeast Area (**Additional – Body Worn Video and Digital In-Car Video System**).

According to the FID investigation, Officer Tahuite's assigned partner that evening had left early with Watch Commander approval and Officer Do was assigned to the Kitroom.<sup>2</sup> Officers Tahuite and Do were assigned to complete the remainder of their shift together with approximately one hour remaining and handle radio calls until Watch Two deployed.

According to Officer Do, the officers received a radio call of a *possible shooting* and as the officers responded, Officer Do heard several additional *Code 3* radio calls *coming in one, after another, after another*. Officer Do noted that *most* of the calls mentioned the suspect had a *gun* and one of the calls stated that the suspect *had shot rounds at a potential victim*. Due to the

<sup>1</sup> The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

<sup>2</sup> A supply room in which personnel acquire and return equipment utilized in their respective daily duties.

*multitude of radio calls that were broadcast, with slightly varying suspect descriptions, Officer Do felt it was his primary duty to consolidate the information being received from CD to get a solid idea of what the suspect looked like and his location. Officer Do read the comments aloud to Officer Tahuite so they knew who they were looking for and where to search. Officer Do advised Officer Tahuite that the suspect was reportedly at the 76 Gas Station located near Figueroa and Gardena and that the suspect was described as a male Hispanic, wearing a white shirt and dark pants. (Debriefing Point No. 1).*

According to Officer Tahuite, the officers *initially received a call of a man with a gun at a Denver address. Officer Tahuite said they received several updates over the radio and an additional six to eight Code Three calls were broadcast, in which CD described a man armed with a black handgun, and a shooting just occurred. Officer Tahuite added that multiple radio calls were being generated mostly at Gardena and Figueroa. Officer Tahuite believed the public needed the officers to be there soon because of other people being in danger.*

The FID investigation revealed that as the officers responded to the original radio call, multiple 9-1-1 calls were broadcast by CD and were being generated by witnesses in the area. Additional radio calls were broadcast for Harbor Patrol Division, to the Los Angeles County Sheriff's Department's dispatch center, and California Highway Patrol's dispatch center.

According to the FID investigation, one of the 9-1-1 calls came from Isidro Flores, who identified his son, David Flores (hereafter referred to as "Flores"), as being armed with a handgun, firing several rounds inside the apartment, and fleeing on foot with the handgun. An additional 9-1-1 call came from Witness Felicia Nash, who looked outside her living room window when she heard gunshots and observed Flores run south on Denver Avenue with a handgun in his right hand. Witness Nash heard more gunshots and then dialed 9-1-1. Witness Johnny Watts was preparing to leave his residence when he heard a gunshot followed by the screams of a female. Witness Watts believed a female had been shot and dialed 9-1-1. Additionally, Witness Nassar Ayad, an employee of First-Choice Liquor on Gardena Boulevard, was in the parking lot of that store, seated inside of his vehicle, and waiting for his supervisor to open the store. Flores approached Witness Ayad's driver side door with a handgun in Flores' right hand and a knife in Flores' left hand. This caused an update to be generated for the original radio call and was broadcast by CD as the *suspect has assaulted somebody inside a blue Toyota SUV, is now walking away from that location.*

**Note:** According to the FID investigation, video surveillance from the liquor store depicted Flores having a brief conversation with Witness Ayad and then Flores walked away. Witness Ayad denied knowing whether Flores was armed with a handgun or knife, but the surveillance video from the liquor store clearly depicted Flores holding the weapons when he approached Ayad.

According to Officer Tahuite, *based on the amount of radio calls the officers received at Gardena and Figueroa, Officer's Tahuite and Do responded to that location. With the information provided by the persons reporting, the officers were looking for a male Hispanic,*

*approximately 30 years of age, wearing a white shirt, armed with a handgun, who was possibly at the gas station.*

According to the FID investigation, Officers A. Jenkins, Serial No. 40039, and R. Podkowski, Serial No. 43618, Southeast Patrol Division, broadcast they were at scene, followed by Officer Do and his partner, Officer Tahuite. Additional Southeast units broadcast they were responding as well (**Additional - Police Rifle Deployment, Firearm Manipulations, Preservation of Evidence and Profanity**).

According to Officer Tahuite, as the officers *approached eastbound from Denver* and neared the *Chevron Gas Station*, Officer Tahuite *observed a possible suspect matching the description, armed with a black handgun*. Officer Tahuite observed the suspect, later identified as David Flores, was standing *on the southwest corner near the light post*. Officer Tahuite *stopped immediately and advised his partner, "There he is. There he is."* Officer Tahuite stopped their police vehicle *approximately 30 feet away...maybe two or three car lengths away from Flores*. Officer Tahuite *felt that having distance and cover was the best thing for the officers at the time*. Officer Tahuite *popped out of his police vehicle, used his door as cover, and immediately drew out (Drawing/Exhibiting)*.

According to Officer Do, as the officers *approached Figueroa eastbound on Gardena*, he observed Flores who *matched the description* and was wearing a *white shirt and dark pants*. Flores was on the *southwest corner of Gardena and Figueroa* standing *right next to a light pole*. Officer Do observed Flores *had a gun in his hand* and heard Officer Tahuite state, "That's him. That's him." When Flores *noticed the officers, he took a position of cover on the south side of the light pole and raised his gun up* as the officers approached. Officer Do opened his passenger door and gave Flores commands to *"Drop the fucking gun and get on the fucking ground."* Fearing *deadly force would be necessary*, Officer Do drew his service pistol (**Drawing/Exhibiting, Additional Tactical Debrief Topics – Profanity, and Additional – Utilization of Cover**).

According to Officer Tahuite, he observed that Flores held the handgun *pointed away from the officers and close to Flores' chest*.<sup>3</sup> Officer Tahuite then observed that Flores *used the post as cover, leaned against it with his right shoulder, and pointed the gun out with the muzzle pointed at the officers*. Officer Tahuite did not recall seeing any *people or vehicles behind Flores* and *attempted to shout, "Drop the gun,"* but it happened *so fast*. Officer Tahuite then heard Officer Do giving Flores commands and observed Flores fire the handgun at the officers.<sup>4</sup> Officer Tahuite feared that he or Officer Do may be *shot or killed* so Officer Tahuite fired *one round at Flores from his service pistol (Lethal Use of Force – Volley One)*.

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<sup>3</sup> According to Officer Tahuite, when they *first made contact with Flores*, he was able to see that Flores' handgun was in battery.

<sup>4</sup> The FID investigation revealed that the bullet from Flores' handgun struck the passenger side door of the police vehicle.

According to Officer Do, as he was *getting out of the car*, Officer Do observed Flores *start shooting at himself and Officer Tahuite*.<sup>5</sup> Officer Do *heard more than one* round being fired and observed Flores *holding his gun and shooting at the officers*. *Fearing for his life*, Officer Do *fired four to five rounds at Flores*. Officer Do continued to fire because he observed that Flores *was still standing with his gun pointed at the officers*. Officer Do *was concerned about possible injuries to Officer Tahuite or injuries that he, himself, might have incurred without noticing*. Officer Do assessed between his rounds in his first volley of fire and believed Flores to *still be standing with the gun pointed towards Officer Do* (**Lethal Use of Force – Volley One**).

**Note:** The FID investigation revealed that Officer Do fired four rounds in his first volley of fire.

According to Officer Do, he observed that Flores *was lying on the ground and the gun was still in his hand*. Officer Do continued to *perceive Flores as a threat* because Flores *still held a deadly firearm*. While on the ground Flores continued to *move a little bit*, raised his right arm up, and *pointed the gun back towards Officer Do*. Fearing for his safety, Officer Do fired one additional round at Flores to stop the lethal threat. Officer Do ordered Flores to *drop the gun*. Flores *eventually complied and threw the handgun and the knife in front of him* (**Lethal Use of Force – Volley Two**).

**Note:** In Officer Do's initial interview, Officer Do stated that *after Flores fell to the ground*, Officer Do *stopped shooting*. Body Worn Video (BWV) revealed that Officer Do fired one additional round when Flores was lying on the ground, while Flores held a handgun in his right hand, and pointed the handgun towards the officers. FID investigators conducted an additional interview with Officer Do who explained that his recollection was the same. Officer Do clarified that he fired his last round at Flores because he *still perceived Flores as a threat* in that Flores *was pointing the gun at Officer Do*.<sup>6</sup>

According to the FID investigation, Officer Do's BWV depicted the suspect's brother, Eric Flores, approach on his bicycle and yell, "That's my brother!" Officer Do directed Eric Flores away from the area (**Additional Tactical Debrief Topic – Profanity**).

According to Officer Tahuite, after his first volley of fire, he assessed Flores' actions and believed that Flores was *continuing to shoot at the officers*.<sup>7</sup> In addition to fearing for Officer Do's and his own safety, Officer Tahuite observed *many people outside and feared Flores was going to start shooting other people*. Officer Tahuite fired four additional rounds at Flores. Officer Tahuite stopped firing his service pistol when Officer Tahuite saw Flores *collapse and stop shooting*. Officer Tahuite was also able to see that Flores' handgun *was in the slide lock position* (**Lethal Use of Force – Volley Two**).

**Note:** According to the FID investigation, Flores fired one round at the officers.

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<sup>5</sup> At the UOFRB, FID presented that three (3) seconds had elapsed from the time Officers Tahuite and Do arrived and when Flores fired a shot at officers.

<sup>6</sup> At the UOFRB, FID presented that 1.76 seconds had elapsed between Officer Do's fourth and final (fifth) shot.

<sup>7</sup> According to Officer Tahuite, he believed Flores had fired three rounds.

The FID investigation revealed that Flores was struck by several rounds. Flores fell to the ground with the handgun still in his hand. An analysis by FID investigators determined that Officer Do's BWV depicted Flores laying on his left side with his backside facing the officers. Flores then fully extended his right arm up and backwards, aiming the handgun towards the officers. In response, Officer Do aimed his pistol at Flores and fired one additional round in a southeasterly direction from an approximate distance of 41 feet. Flores was struck by the gunfire and stopped pointing his handgun at the officers.

Officers W. Niemeyer, Serial No. 37973, and A. Foca, Serial No. 43683 arrived at scene moments before the OIS. As the officers approached east on Gardena Boulevard, Officer Niemeyer observed Flores walking south on Figueroa Street in front of Officers Do and Tahuite. Officer Niemeyer alerted Officer Foca.

According to Officer Niemeyer, he *observed the person matching the suspect description*. He then *heard one gunshot followed by a series of gunshots* and saw Officer Do *discharging his firearm at the suspect*. Officer Niemeyer could *see the suspect armed with what he believed to be a firearm, and Flores was turning towards Officer Do... with the firearm coming up*. Officer Niemeyer parked directly behind Officers Tahuite and Do's vehicle. Officers Niemeyer and Foca exited their vehicle and approached on the passenger side near Officer Do. Upon seeing Flores throw the handgun, Officer Niemeyer formulated a tactical plan that included cover officers, less lethal options, and an arrest team. In addition, Officer Niemeyer communicated to the officers that they *had time*. He ensured the arrest team donned their personnel protective equipment to avoid any risk of biohazard contamination and advised the officers to notify him when they were *ready* to approach. Once a team of officers was assembled and duties assigned, the officers approached, handcuffed, and searched Flores for additional weapons. Maintaining the role of Incident Commander (IC), Officer Niemeyer identified the involved officers and advised them to stand by their vehicle until a supervisor arrived. Officer Niemeyer also requested a RA for Flores (**Command and Control and Additional – Utilization of Cover**).

Sergeant A. Castellanos, Serial No. 40202, Sergeant G. Ruiz, Serial No. 37408, and Sergeant E. Gabaldon, Serial No. 35126, from Southeast Patrol Division, responded to the scene of the OIS.

According to Sergeant Castellanos, he responded to the scene and identified the officers involved in the use of lethal force. He immediately *separated* Officers Tahuite and Do and obtained a Public Safety Statement (PSS) from the officers but stopped when Sergeant Castellanos *realized* there were *two shooters*. Sergeant Castellanos advised Sergeant Gabaldon *he needed another supervisor* for the *other shooter*. After Sergeant Ruiz took custody of Officer Do from Sergeant Castellanos, Sergeant Castellanos *then took a complete PSS* from Officer Tahuite (**Command and Control**).

According to Sergeant Ruiz, he responded to the scene and was directed by Sergeant Castellanos to monitor Officer Do. Sergeant Ruiz monitored Officer Do and obtained a complete PSS from Officer Do (**Command and Control**).

According to Sergeant Gabaldon she responded to the scene, assumed the role of IC, and managed the scene (**Command and Control**).

Los Angeles Fire Department personnel arrived and treated Flores for multiple gunshot wounds. Flores succumbed to his injuries and was determined deceased at scene.

## **FINDINGS**

**Tactics** – Tactical Debrief, Officers Tahuite and Do.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Tahuite and Do.

**Lethal Use of Force** – In Policy, No Further Action, Officers Tahuite and Do.

## **ANALYSIS**<sup>8</sup>

### **Detention**

Officers Tahuite and Do responded to multiple radio calls of a man armed with a gun. As the officers approached, Officer Do consolidated the incoming information and verbally updated his partner, Officer Tahuite, with the suspect's description (later identified as Flores) and possible location. As the officers arrived in the area, they observed Flores, who was similarly described in the radio calls and Flores was in possession of a handgun. Flores took a barricaded position behind a large pole and assumed a shooting stance while pointing the handgun toward Officers Tahuite and Do. Flores fired his handgun at those officers, which resulted in an OIS. The officers' actions were appropriate and within Department policies and procedures.

### **Tactics**

Department policy relative to Tactical Debriefs is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance"* (Los Angeles Police Department Manual, Volume 3, Section 792.05).

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

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<sup>8</sup> The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

### Tactical De-Escalation

*Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

### Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officers Tahuite and Do responded to a radio call of a man with a gun, which was upgraded to a shooting just occurred as the officers were responding. Officer Tahuite believed that he and Officer Do needed to respond to the location because the community was in danger. As the officers arrived in the area, they observed Flores, as described in the radio calls, and in possession of a handgun. Flores took a position slightly behind a large pole and assumed a shooting stance while pointing the handgun toward Officers Tahuite and Do. Flores fired his handgun at the officers, striking the front passenger door of their police vehicle, which resulted in an OIS. The FID investigation revealed that only three seconds had elapsed between the time the officers had arrived and Flores' discharging of his handgun at the officers.

**Planning** – Officer Tahuite's originally assigned partner received Watch Commander approval to leave early. Officers Tahuite and Do were assigned to work together approximately one hour prior to the end of their shift and had not previously worked together. Officer Tahuite was completing some Field Interview cards, Automated Field Data Reports, and other administrative duties. At approximately 0620 hours, Officers Tahuite and Do went to Tahuite's originally assigned police vehicle and decide they would log off and re-log on as partners if they had to respond to a radio call prior to the end of their shift.

Officer Tahuite said he was preparing to log them off when this radio call was broadcast at 0639 hours and had not yet discussed tactics with Officer Do; however, Officer Tahuite explained it was common practice for the driver to be the contact officer and the passenger to be the cover officer but the roles could switch. Officer Tahuite usually discussed tactics with all his new partners but had not expected that he and Officer Do would be going out in the field so close to the end of their shift.

As part of the planning process and while enroute to the radio call, Officer Do consolidated all the incoming updates and radio call information while his partner, Officer Tahuite, drove them to the general area where the radio calls were being generated. Officer Do cleared intersections for Officer Tahuite in between filtering the numerous pieces of information as calls continued to be broadcast. Officer Do also verified with Officer Tahuite their less-lethal options while enroute to the call. As part of their contact and cover roles, Officer Tahuite alerted his partner of the possible suspect, stopped their police vehicle, and was preparing to direct Flores to drop the handgun when Flores fired a shot in the officers' direction. Officer Tahuite explained their roles as contact and cover officer switched at that point. Flores was closer to Officer Do's side, so Officer Do assumed the role of contact officer and gave Flores commands. Officer Tahuite then assumed the role of cover officer, broadcast a Help Call, began requesting resources over the radio, and communicated pertinent information for responding officers.

The UOFRB would have preferred these officers had discussed specific plans prior to engaging the suspect; however, the numerous calls for service broadcast by CD in multiple locations, along with the rapidly unfolding incident, limited Officers Do and Tahuite's ability to further plan and communicate with each other as they responded to the area. As part of the planning, Officer Do did a good job processing the information and relaying that information to his partner, and both officers continued to discuss the information while responding.

**Assessment** – Officers Tahuite and Do began their initial assessment while driving to the radio call. Officer Do continued to review incoming information on Flores' description, movement, and possible locations.

Prior to arriving at the location, Officer Tahuite noted there were many people in the area which caused Officer Tahuite to fear that Flores might fire upon other people in the area based on the information received in the radio calls. Officer Do verbalized his assessments to Officer Tahuite and they began discussing potential gas station locations as they were closely approaching the area. Officer Tahuite observed Flores and made an assessment that Flores was the possible suspect who was generating the radio calls because Flores was armed with a handgun. Officer Do observed that Flores was holding a handgun in his right hand. Officer Do quickly assessed the need to immediately address the threat in order to safeguard the lives of the community since the radio calls had already indicated Flores may have fired the handgun.

Due to Flores' actions of taking a shooting position, Officer Tahuite estimated he stopped the police vehicle approximately 40 feet away. Officer's Tahuite and Do assessed Flores' actions, the background, and determined that Flores posed a threat of serious bodily injury or death to both the officers and the citizens in the area. Officer Do also recognized that a citizen was approaching the area on his bicycle and Officer Do quickly re-directed him out of the area.

The UOFRB noted that during the OIS, Officer's Do and Tahuite assessed that their initial rounds did not stop Flores' actions and responded with the minimal amount of additional lethal force to stop Flores.



The UOFRB noted that Officers Tahuite and Do stopped firing when Flores fell to the ground. Officer Do only fired when the suspect pointed the handgun again at Officer Do. Officer's Do and Tahuite utilized cover and had distance. Officer Tahuite was conscious of the early time of day and the emerging activity of other persons in the area. When Officer Tahuite fired his service pistol, he perceived that Flores' background did not contain any persons or vehicles; however, Officer Do's BWV depicts a intermittent flow of traffic behind Flores in the background.

**Time** – Officers Tahuite and Do were faced with a rapidly escalating incident in which Flores' actions posed a deadly threat to the officers and citizens in the area. Officer's Do and Tahuite were immediately confronted by Flores who was clearly armed and fired the first shot within three seconds of the officer's arrival. Due to the immediacy of Flores' actions, the officers had limited opportunity to utilize time as a de-escalation technique in order to reduce the intensity of the encounter. Be that as it may, Officers Tahuite and Do stopped the police vehicle the moment they observed Flores, which afforded them some distance from Flores while still maintaining a line of sight. Officer Tahuite then utilized that distance, combined with the cover of the police vehicle's ballistic door, to provide time in which to utilize verbalization as a de-escalation tool and in an attempt to resolve the incident peacefully, without the use of any force. Officer Do also utilized that distance and verbalization as a de-escalation tool; however, Officer Do did not take full advantage of the police vehicle's ballistic door panel and was slightly offset to the right of the door.

After Flores discarded the handgun and knife, Officer Niemeyer, as the IC, recognized the opportunity to slow the pace of the officers' approach towards Flores so that an appropriate tactical plan could be developed and safely implemented.

**Redeployment and/or Containment** – Officers Tahuite and Do approached the area and observed Flores armed with a handgun. The officers tactically parked their police vehicle and re-deployed from inside their vehicle into a position of cover, behind the vehicle's ballistic door panels. Officer Tahuite broadcast pertinent information regarding Flores' position and directions for responding units to safely contain the area and eliminate a possible crossfire or cross traffic situation.

Upon the arrival of additional officers, Officer Do re-deployed from his position behind the vehicle's ballistic door panel and become part of the tactical plan and arrest team. Officer Do was assigned as the designated cover officer in the arrest team in an effort to contain Flores, prevent Flores from further harming anyone, and to allow Flores to receive medical attention. Containment of the scene continued with the placement of crime scene tape and the tactical positioning of the police vehicles to control the flow of vehicular and pedestrian traffic.

**Other Resources** – Officer Tahuite was aware that additional resources were enroute due to the number of units who Officer Tahuite heard broadcast their response. As soon as safely feasible, Officer Tahuite upgraded their incident to a Help Call providing for additional assistance and situational awareness of incoming personnel and associated agencies. Officer Tahuite requested the resource of a RA for Flores in conformance with the Department's policy on the preservation

of human life. As the supervisor's arrived at the location and made assessments, the supervisors acquired additional resources as needed.

**Lines of Communication** – The officers were responding to a rapidly unfolding incident and did not have time to discuss tactical roles but adhered to Departmental training. Officers Tahuite and Do communicated with each other as they responded to the radio call. Officer Do provided pertinent information on Flores' movements, updated locations, actions, and similar descriptions. Officer Do and Tahuite discussed the possible gas station location where Flores was last seen, as indicated in the radio calls, and while updates were continually broadcast.

While responding to the area, Officer Tahuite saw Flores and immediately notified his partner, Officer Do. The rapid nature of the incident limited Officers Tahuite's and Do's ability to establish lines of communication with Flores. Although the officers attempted to de-escalate Flores through communication efforts, Flores did not emit a verbal response and instead, pointed a handgun at the officers, and discharged a round. Officer Do continued to verbalize to Flores in an effort to gain Flores' compliance but Flores failed to drop the handgun as directed. Flores still provided no verbal response to the officers after falling to the ground but continued to move and point the handgun back at the officers, while Flores was facing away from the officers. After Flores discarded the knife and handgun, Officer Do attempted to provide clear directions to Flores in an effort to take Flores into custody. Officer Tahuite broadcast a Help Call over Southeast Area base frequency, provided important information to responding units, and requested additional resources.

Lastly, Officer Niemeyer communicated clear and concise instructions to the officers at scene while developing a tactical plan and forming an arrest team with designated roles. It was through this verbalization with the other officers that Officer Niemeyer was able to slow down the tempo of the incident to prevent any further risk of unnecessary harm to the community, the officers, and Flores.

The UOFRB determined, and I concur, that while Officers Tahuite and Do implemented elements of tactical de-escalation, the unprovoked and immediate actions of Flores limited the officers' ability to fully implement further de-escalation techniques.

During a review of the incident, the following Debriefing topics noted:

#### **Debriefing Point No. 1 Tactical Planning/Communication**

*In order to ensure officer safety and help ensure an appropriate outcome, the primary officers and cover officers must effectively communicate with one another. Appropriate communication involves advising the primary officer of any critical occurrences or safety issues (California Commission on Peace Officers Standards and Training Learning, Domain No. 22).*

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

Operational success is based on the ability of the officers to effectively communicate during critical incidents. The officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution. A sound tactical plan should be implemented to ensure minimal exposure to the officers, while keeping in mind officer safety concerns.

Officer Tahuite's partner was granted permission to leave early and Officer Do, who was assigned to the Kitroom that evening, was re-assigned to be Officer Tahuite's partner approximately an hour prior to their end of watch. Officer Tahuite said he was preparing to log them off when a radio call was broadcast in their area at 0639 hours. Officer Tahuite had not yet discussed tactics with Officer Do; however, he explained it was common practice for the driver to be the contact officer and the passenger to be the cover officer, but the roles could always be switched if needed. Officer Tahuite usually discussed tactics with all his new partners but hadn't expected he and Officer Do would be going out in the field so close to the end of their shift. In this case, Officers Tahuite and Do did not discuss a specific plan or communicate their tactical approach while responding to the radio call but rather, relied on traditional contact and cover roles with one another.

As part of their tactical planning and communication while enroute to the radio call, Officer Do consolidated all the incoming updates and radio call information and verbalized the information to Officer Tahuite. Officer Tahuite drove them to the general area where the radio calls were being generated. Officer Do cleared intersections for his partner in between filtering the numerous pieces of incoming information as the radio calls continued to be broadcast. Officer Do also verified their less-lethal options with Officer Tahuite while enroute to the call and discussed the businesses in the area where Flores had last been seen.

As part of their contact and cover roles, Officer Tahuite alerted his partner of the possible suspect (later identified as Flores), stopped their police vehicle and was preparing to direct Flores to drop the handgun when Flores fired a shot in the officers' direction. Officer Tahuite explained that their roles as contact and cover officer switched at this point. Flores was closer to Officer Do's side, so Officer Do assumed the role of contact officer and gave Flores commands. Officer Tahuite then assumed the role of cover officer, broadcast a Help Call, began requesting resources over the radio, and communicated pertinent information for responding officers.

The UOFRB noted that although their planning was limited, this was Officers Do and Tahuite's first time working together and they had been assigned as partners near the end of their watch. The numerous calls and updates were indicative that this incident was serious and rapidly evolving. This incident involved a "man with a gun" radio call with comments that Flores had fired rounds and was mobile. Due to the rapidly unfolding nature of this incident, the officers had limited time, which also limited their ability to further plan and communicate with each other as they were quickly responding to the area. The officers were immediately challenged by Flores and communicated their observations to each other. The UOFRB also noted there were no conflicting commands given by the officers to Flores.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that while identified as an area for improvement, Officer Do's and Tahuite's actions did not deviate from Department policy and training. I will direct that this be a topic of discussion during the Tactical Debrief.

### **Additional Tactical Debrief Topics**

**Profanity** – The investigation revealed that Officer Do used profanity while giving Flores commands. In addition, he utilized profanity when addressing a citizen that approached on a bicycle in the middle of the tactical incident. Officer Do indicated that his use of profanity was intended to establish greater command presence during the incident. The UOFRB considered Officer Do's level of stress and agitation after being fired upon and noted Officer Do's adjustment in his demeanor and discontinued use of profanity while directing Flores after the shooting concluded. Officer Do is reminded that the use of profanity may unnecessarily escalate the situation and is not in conformance with the Department's expectations of an officer's conduct. I will direct this be a topic of discussion during the Tactical Debrief.

### **Command and Control**

*Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

Niemeyer arrived at the help call prior to the arrival of a supervisor. Officer Niemeyer took an active leadership role, initiated command and control, and formulated a tactical plan to effect the arrest of the suspect. In addition, Officer Niemeyer maintained the role as the Incident Commander (IC), identified the involved officers, and advised them to stand by their vehicle until a supervisor arrived. Officer Niemeyer continued to assess and coordinate resources at the scene until relieved by arriving supervisors. The UOFRB commented on Officer Niemeyer's strong leadership role, his calm demeanor, and clear direction provided to the other officers. In

my overall assessment, Officer Niemeyer demonstrated active leadership and met my expectations of a senior officer at the scene of a critical incident.

Sergeant Castellanos responded to the scene and began to identify the officers that were involved in the use of lethal force. He immediately separated and monitored the involved officers and obtained a PSS from Officers Tahuite and Do but stopped when he realized both officers had fired shots. He recognized the need for an additional supervisor to assist with the separation and monitoring and made that request to the IC. Upon arrival of additional supervisors, Sergeant Castellanos handed custody of Officer Do and Do's BWV to Sergeant Ruiz. The actions of Sergeant Castellanos' actions were consistent with Department supervisory training and met my expectations of a field supervisor during a critical incident.

Sergeant Gabaldon responded to the scene and assumed the role of IC. Sergeant Gabaldon ensured that the crime scene was preserved and assessed and coordinated incoming resources. Sergeant Gabaldon's actions were consistent with Department supervisory training and met my expectations of a field supervisor during a critical incident

Sergeant Ruiz responded to the scene and was directed by Sergeant Castellanos to monitor Officer Do. Sergeant Ruiz ensured Officer Do remained separated, monitored, and obtained a complete PSS from Officer Do.

**Note:** According to the FID investigation, when Sergeant Ruiz arrived at scene, he began to monitor Officer Do. Sergeant Ruiz' BWV recorded him asking Officer Do whether or not he had a chance to talk to his partner.

According to Officer Do, he did not speak with Officer Tahuite about the OIS prior to being interviewed by FID investigators.<sup>9</sup> By not speaking with each other, Officers Tahuite and Do maintained the integrity of the investigation and adhered to Department policy and procedure.

I have significant concerns with Sergeant Ruiz' directions during this critical incident and have determined that his actions were not consistent with Department policy, procedure, and provided supervisory training. Sergeant Ruiz did not meet my expectations of a field supervisor during a critical incident and as a result, Southeast Area's command has initiated a personnel complaint to further investigate the deviation from Department standards and my expectations of our employees.

### **Tactical Debrief**

In conducting an objective assessment of this case, the UOFRB determined, and I concur, that Officers Tahuite and Do's tactics did not substantially deviate from approved Department policy and tactical training.

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<sup>9</sup> Special Order No. 11, dated June 15, 2016 – Obtaining a Public Safety Statement – Categorical Use of Force – Revised, was adopted by the Department on June 15, 2016

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Although, it was determined that Officers Niemeyer, Padowski, Jenkins, and Foca were not substantially involved in this incident and did not receive formal findings, Captain Tingirides recommended, and the UOFRB concurred, that they would benefit from attending the Tactical Debrief. I concur with those recommendations and therefore, will direct that Officers Niemeyer, Padowski, Jenkins, and Foca, along with Officers Tahuite and Do, attend a Tactical Debrief and that the specific identified topics be discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Radio and Tactical Communication (including Code Six);
- Tactical Planning;
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### **General Training Update (GTU)**

On May 14, 2019, Officers Tahuite and Do attended a GTU. All mandatory topics were covered, including Reverence for Human Life, Firearms, and Force Option Simulator.

### **Drawing/Exhibiting**

Department policy relative to drawing and exhibiting a handgun is: *"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified"* (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).

According to Officer Do, as the officers approached Figueroa eastbound on Gardena, Officer Do observed Flores, who matched the description and was wearing a white shirt and dark pants. Flores was on the southwest corner of Gardena and Figueroa standing right next to a light pole. Officer Do observed Flores had a handgun in his hand and heard Officer Tahuite state, "That's him. That's him." When Flores noticed the officers, he took a position of cover on the south side of the light pole and raised his handgun up as the officers approached. Officer Do opened his passenger door and gave Flores commands to drop the handgun and get onto the ground. Fearing that deadly force would be necessary, Officer Do drew his service pistol.

Officer Do recalled,

*As we approached Figueroa eastbound on Gardena, my partner and I noticed a suspect that matched the description, white shirt, dark pants. My partner identified saying -- I believe he said, "That's him. That's him." My door was already partially opened. As I was stepping out of the car, I noticed the suspect on the southwest corner of Gardena and Figueroa. He had a gun in his hand. I don't remember which hand it was in. And he was right next to a light pole, I believe. So he was -- as he noticed us, he took a position of cover by the light pole. He was on, I believe, the south side of the light pole facing westbound in our direction, and he was raising his gun up as we approached. As I was opening the door and getting out of the car, he started shooting at us. At that point I exhibited and -- drew and exhibited my firearm due to the tactical situation and the likelihood of it escalating to the point where deadly force would be necessary or justified.<sup>10</sup>*

According to Officer Tahuite, as the officers approached eastbound from Denver and neared the Chevron Gas Station, he observed Flores, matching the description of the suspect, armed with a black handgun. Officer Tahuite observed that Flores was standing on the southwest corner near the light post. Officer Tahuite stopped immediately and advised Officer Do, "There he is. There he is." Officer Tahuite stopped their police vehicle approximately 30 feet away or two or three car lengths away from Flores. Officer Tahuite felt that having distance and cover was the best thing for the officers at the time. He popped out of his police vehicle, used his door as cover, and immediately drew out.

Officer Tahuite recalled,

*I observe a possible suspect matching the description and armed with a black handgun. At this point I stop immediately and advise my partner, "There he is. There he is." I parked the vehicle and I'm approximately 30 feet away, maybe two, three car lengths away. Due to him being armed with a gun, I felt that having distance and cover was the best thing for us to do at the time. We -- I popped out and I used my door as cover and immediately drew out. At this point I see that the suspect has the gun pretty much pointed away from us close to his chest, not pointed at us.<sup>11</sup>*

In this case, the UOFRB conducted a thorough review and evaluation of the reasonableness of Officers Tahuite and Do's Drawing/Exhibiting. The UOFRB noted that the officers had observed Flores was armed with a handgun and believed it reasonable for them to draw their service pistols.

As such, based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers Tahuite and Do, while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

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<sup>10</sup> Officer Do, 1<sup>st</sup> Interview, Page 9, Lines 5-25.

<sup>11</sup> Officer Tahuite, Page 8, Lines 21-25, and Page 9, Lines 1-7.

Therefore, I find Officers Tahuite and Do's Drawing/Exhibiting to be In Policy, No Further Action.

### **Use of Force – General<sup>12</sup>**

*It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*

- *Defend themselves;*
- *Defend others;*
- *Effect an arrest or detention;*
- *Prevent escape; or,*
- *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

*The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances. (Los Angeles Police Department Manual, Volume 1, Section 556.10)*

### **Lethal Use of Force**

*Law enforcement officers are authorized to use deadly force to:*

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<sup>12</sup> Special Order No. 4, 2020 – Policy on the Use of Force - Revised, was adopted by the Department on February 5, 2020, after this incident occurred.



- *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
- *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
- *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume No.1, Section 556.10).*

**Officer Tahuite** – .45 Caliber, five rounds in a southeasterly direction, in two volleys of fire, from an approximate distance of 46 feet.

### **Volley One**

Officer Tahuite observed that Flores held the handgun pointed away from the officers and close to Flores' chest. Officer Tahuite then observed that Flores used the post as cover, leaned against it with his right shoulder, and pointed the gun out with the muzzle pointed at the officers. Officer Tahuite did not recall seeing any people or vehicles behind Flores and attempted to shout, "Drop the gun," but it happened fast. Officer Tahuite then heard Officer Do giving Flores commands and observed Flores fire the handgun at the officers.<sup>13</sup> Officer Tahuite feared that he or Officer Do may be shot or killed so Officer Tahuite fired one round at Flores from his service pistol.

Officer Tahuite recalled,

*At this point I observe the suspect kind of use -- use the post as cover. He leans on his right shoulder area and he points the gun out... Now the muzzle is pointed at my partner and I.. At this point I attempted to -- prior to him pointing... pointing that muzzle, I attempted to shout, "Drop the gun." And my partner also, I heard him say something. Not sure what. But it happened very quickly at this time. We did not have enough time to continue to give him commands and utilize less lethal options, such as OC, beanbag, or anything -- any other less lethal options or advise units that we were Code 6 on the suspect. Within that instant, like I said, he pulls the gun toward -- pointed at us -- the muzzle at us and at this point I believe he shot first or, you know, I'm not -- I'm not too sure, but I do believe that he shot at us, and at this point I shoot one round at the suspect. I was in fear that he was going to shoot us and kill us or hurt us.<sup>14</sup>*

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<sup>13</sup> The FID investigation revealed that the bullet from Flores' handgun struck the passenger side door of the police vehicle.

<sup>14</sup> Officer Tahuite, Page 9, Lines 7-10 and 15-25, and Page 10, Lines 1-7.

### Volley Two

According to Officer Tahuite, after his first volley of fire, he assessed Flores' actions and believed that Flores was continuing to shoot at the officers. In addition to fearing for Officer Do's and his own safety, Officer Tahuite observed many people outside and feared Flores was going to start shooting other people. Officer Tahuite fired four additional rounds at Flores. Officer Tahuite stopped firing his service pistol when Officer Tahuite saw Flores collapse and stop shooting. Officer Tahuite was also able to see that Flores' handgun was in the slide lock position.

Officer Tahuite recalled,

*I realize that with one shot the suspect did not stop and continued to shoot at us. At this point I continued to shoot approximately four rounds. Five rounds in total until the suspect - I observed him collapse and then he falls down to the ground, and at this point his gun is in the slide lock position. It was not in a slide lock position when we first made contact with him.<sup>15</sup>*

*I saw many people outside. So I feared that he was going to hurt us or start shooting other people as well.<sup>16</sup>*

According to Officer Tahuite, in response to FID's question regarding how many rounds he believed Flores had fired at the officers, Officer Tahuite stated "three."

**Officer Do** – 9mm, Five rounds in a southeasterly direction, in two volleys of fire from an approximate distance of 41 feet.

### Volley One

As he was getting out of the car, Officer Do observed Flores start shooting at Officer Tahuite and himself. Officer Do heard more than one round being fired and observed Flores holding his handgun and shooting at the officers. Fearing for his life, Officer Do fired four to five rounds at Flores. Officer Do continued to fire because he observed Flores was still standing with his handgun pointed at the officers. Officer Do was concerned about possible injuries to Officer Tahuite or injuries that he, himself, might have incurred without noticing. Officer Do assessed between his rounds in his first volley of fire and believed Flores was still standing with the handgun pointed toward Officer Do.

Officer Do recalled,

*I heard a couple [rounds fired from Flores] ... I believe I heard more than one.<sup>17</sup>*

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<sup>15</sup> Officer Tahuite, Page 10, Lines 14-21.

<sup>16</sup> Officer Tahuite, Page 10, Lines 10-12.

<sup>17</sup> Officer Do, 1<sup>st</sup> Interview, Page 19, Lines 4-10.

*And as soon as he started shooting at us, I was -- I deployed deadly force in order to protect myself and others from serious bodily injury or death... I believe I fired four to five rounds at the suspect. The suspect fell -- fell towards the street where he was still holding the gun. I ordered the suspect to drop the gun, which he eventually did so.<sup>18</sup>*

*When he started falling to the ground, I stopped shooting. And when he fell to the ground, I had my gun pointed at him, but I did not shoot.<sup>19</sup>*

### Volley Two

Officer Do observed that Flores was lying on the ground and the handgun was still in Flores' hand. Officer Do continued to perceive Flores as a threat because Flores still held the handgun. While on the ground Flores, continued to move a little bit, raised his right arm up, and pointed the handgun back towards Officer Do. Fearing for his safety, Officer Do fired one additional round at Flores to stop the lethal threat. Officer Do ordered Flores to drop the handgun. Flores eventually complied and threw the handgun and the knife in front of him.

Officer Do recalled,

*Through that process my -- I was concerned for possible injuries to my partner or I might have incurred without noticing, but that was in the back of my mind. My first primary concern was getting the gun out of his hand...He was lying on the ground on the street on Gardena. The gun was still in his hand. So I perceived him as still a threat, because he still held a deadly firearm in his hand.<sup>20</sup>*

*I only shot when I still perceived him as a threat...When he was pointing the gun at me.<sup>21</sup>*

In this case, the UOFRB conducted a thorough review of the investigation and considered several factors in evaluating the reasonableness of Officer Tahuite and Do's use of lethal force. The UOFRB noted that the incident was dynamic and unfolded rapidly. Both officers were forced to make split-second decisions to protect themselves and citizens who were in the nearby area from Flores who presented a deadly threat. Flores was armed with a handgun and upon the arrival of Officers Tahuite and Do to his location, leaned against a light pole. Both Officers Tahuite and Do opined that Flores was using the light pole as cover. Flores fired his handgun at the officers, striking their police vehicle on the front passenger door. Officer Tahuite, in fear for his life and for the life of Officer Do, fired his service pistol at Flores. While continuing to assess, Officer Tahuite additionally feared for the safety of citizens in the area, and again fired his service pistol. Officer Do perceived that Flores was firing at both Officers Do and Tahuite; therefore, Officer Do fired his service pistol at Flores. Officer Do continued to assess and perceived that Flores was still pointing his handgun at Officer Do. Officer Do fired his service pistol to protect his own life.

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<sup>18</sup> Officer Do, 1<sup>st</sup> Interview, Page 9 Line 5, and Page 10, Lines 1-8.

<sup>19</sup> Officer Do, 1<sup>st</sup> Interview, Page 28, Lines 4-7.

<sup>20</sup> Officer Do, 1<sup>st</sup> Interview, Page 28, Lines 10-21.

<sup>21</sup> Officer Do, 3<sup>rd</sup> Interview, Page 5, Lines 19 and 23.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers Tahuite and Do, would reasonably believe Flores' actions presented an imminent threat of death or serious bodily injury and that the use of lethal force would be objectively reasonable.

Therefore, I find Officers Tahuite and Do's Use of Lethal Force to be In Policy, No Further Action.

### **Additional/Equipment**

**Patrol Rifle Deployment** – The investigation revealed that Officer A. Jenkins, Serial No. 40039, Southeast Patrol Division, had his Patrol Rifle slung for approximately four minutes after the suspect was handcuffed and a Code Four was obtained at the location. In addition, while his Police Rifle was deployed, Officer Jenkins gave multiple directions to other officers, drew his hand-held radio to broadcast on Southeast base frequency, and met with a field supervisor from the Los Angeles County Sheriff's Department. Officer Jenkins is reminded to safely secure the Patrol Rifle in his police vehicle as soon as practical and upon conclusion of its tactical necessity in accordance with Departmental Drawing and Exhibiting policy.

Captain E. Tingirides, Serial No. 31546, Commanding Officer, Southeast Patrol Division, advised that this issue was addressed with Officer Jenkins through divisional counseling and a Supervisory Action Item (SAI) was created. The Commanding Officer of Operations South Bureau (OSB) and the Director of the Office of Operations (OO) concurred with this action. As such, I deem no further action is necessary.

**Firearm Manipulations** – The FID investigation revealed that Officer R. Podkowski, Serial No. 43618, Southeast Patrol Division, inadvertently induced a weapon's malfunction when holstering his service pistol. This occurred when the slide of his service pistol encountered a portion of his holster causing the slide to move slightly to the rear. This prevented Officer Podkowski from properly securing his handgun because the retention holster did not completely close. Observing the slide was out of battery, Officer Podkowski had to perform a clearance procedure, causing a round to eject. The round was appropriately left untouched for FID investigators. Officer Podkowski acknowledged that this was the second incident in which he had caused the slide of his handgun to go out of battery. He had a prior occurrence in an unrelated incident in which he induced the same malfunction. Officer Podkowski is reminded of the importance of maintaining a level of familiarity with his service pistol and related equipment.

Captain Tingirides advised that this issue was addressed with Officer Podkowski through divisional counseling and a SAI was generated. Additionally, Officer Podkowski's holster was inspected by Department training personnel and the required adjustments were made. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I am directing that Officer Podkowski receive additional training with regard to properly holstering his handgun to enhance future performance.

**Preservation of Evidence** – The FID investigation revealed that Officer Jenkins placed his foot on the grip of Flores’ handgun as the officers approached to handcuff Flores. Officer Jenkins did not move the handgun with his foot; however, his foot remained on the handgun for an approximate 48 seconds. After removing his foot, Officer Jenkins remained and continued to guard the handgun as evidence. Officer Jenkins is reminded of the importance of the preservation of evidence. I will direct this be a topic of discussion during the Tactical Debrief. Captain Tingirides advised that this issue was addressed through divisional counseling. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

**Utilization of Cover** – The investigation revealed that Officer Do did not fully utilize his police vehicle’s ballistic door panel when involved in the OIS with Flores. Officer Do positioned himself slightly offset to the right of the door. To give himself additional time if needed, Officer Niemeyer parked behind Officer’s Do and Tahuite’s police vehicle. At this time, Flores had fallen to the ground and thrown both his handgun and knife in front of himself. Officer Neimeyer moved from his police vehicle to Officer Do’s police vehicle to verify if Officer Do had been injured and to provide assistance to Officer Do if needed. Officer Niemeyer requested additional officers over to respond to Officer Do’s side of the police vehicle to discuss a tactical plan, assign roles, and to put together an arrest team, which required they be in close proximity to each other to hear and receive instructions. Officers Niemeyer, Foca, and Jenkins, positioned themselves to the right of Officer Do. Officers Do, Niemeyer, Foca, and Jenkins did not utilize all available cover, which left them exposed. Officers are reminded that the police vehicles are equipped with ballistic door panels to provide a safe barrier between themselves and suspects. I would have preferred that an additional police vehicle was moved into position to provide cover or to maximize the use of the entire available ballistic door panel as cover. In an effort to enhance future tactical performance, I will direct that this topic be discussed during the Tactical Debrief. Captain Tingirides advised that this issue was addressed through divisional counseling. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

**Digital In-Car Video System (DICVS) Activation** – It was noted in the FID investigation that Officer Tahuite’s original partner on the night of the incident had ended his shift early. As a result, Officer Do was taken from the Kitroom and reassigned to work with Officer Tahuite. The officers were in the process of logging back on to the DICVS in Shop No. 81396 when the radio call at Figueroa Street and Gardena Boulevard was broadcast. The officers immediately responded to the call, having done so prior to the DICVS completing its rebooting cycle. The DICVS in Shop No. 81396 did not activate and received a shutdown command at 0628 hours. Sergeant Jason Liguori, Serial No. 36091, Information Technology Group, examined the DICVS log for Shop No. 81396 and determined that a data error occurred during the shutdown command, which caused an anomaly and prevented the system from recording during the emergency response. Sergeant Liguori further believes that the officer(s) did not do anything improper which would have caused the system to not record.

**BWV Activation** – The investigation revealed that Officer Do had a late BWV activation, which was activated during his Code Three response. He powered it on and activated it while responding Code Three to the radio call as the primary unit. Officer Do’s BWV captured the

OIS in its entirety. Upon notification of this issue, Captain Tingirides investigated the matter and advised that Officer Do was assigned as the Kitroom Officer and was later partnered with Officer Tahuite to handle radio calls until Day Watch came down from roll call. Officer Do believed he was going end of watch and had powered down his BWV at the station in preparation. Captain Tingirides advised there were no prior incidents of late activation. This issue was addressed with Officer Do through divisional counseling documented on a Comment Card and the generation of a SAI. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

**Profanity** – The investigation revealed that Officers Jenkins and Podkowski utilized profanity during the incident. In conducting an analysis, Captain Tingirides determined the profanity did not occur in the presence of other citizens. Captain Tingirides advised that this issue was addressed through divisional counseling. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, I deem no further action is necessary.

#### **Audio/Video Recordings**

**BWV** – Southeast Patrol Division personnel were equipped with BWV at the time of the incident. Officers Tahuite and Do's BWV captured their arrival, Flores taking a position behind the pole, pointing a handgun at the officers and the subsequent OIS in its entirety.

**DICVS** – Southeast Patrol Division vehicles were equipped with DICVS. Officers Tahuite and Do's vehicle's DICVS was inoperable and did not capture the OIS. Officers Niemeyer and Foca's DICVS captured audio of the OIS.

**Outside Video** – Surveillance video from area businesses captured different angles of Flores walking with a handgun in his right hand and a knife in his left hand. Surveillance video also captured Flores making contact with Witness Ayad. A camera facing in a northwesterly direction captured the OIS.

Respectfully,

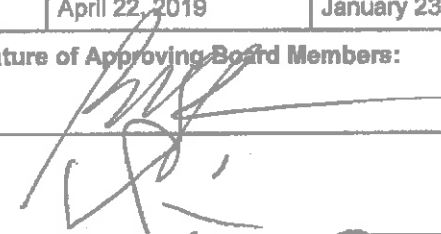




  
MICHEL R. MOORE  
Chief of Police

Date: 2-13-20

LOS ANGELES POLICE DEPARTMENT  
USE OF FORCE REVIEW BOARD REPORT

INC No. 016-19	CF No.	DR No.
<b>SHOOTING</b>		

**REVIEW BOARD INFORMATION**

<b>Location of Incident</b> S. Figueroa & W. Gardena Boulevard	<b>RD</b> 1891	<b>Date of Incident</b> April 22, 2019	<b>Date and Time of Board Review</b> January 23, 2020 1100 Hours
<b>Chair</b> Assistant Chief B. Gimala, Serial No. 24916	<b>Signature of Approving Board Members:</b> 		
<b>Member (Office Representative)</b> Commander M. Rimkunas, Serial No. 32211			
<b>Member (Police Sciences and Training Bureau)</b> Deputy Chief M. Baeza, Serial No. 26624			
<b>Member (Bureau)</b> Commander E. Eskridge, Serial No. 24585			
<b>Member (Peer)</b> Officer W. Cooper, Serial No. 40415			
<b>Presenting Commanding Officer</b> Captain E. Tinglides, Serial No. 31546			
<b>Notes:</b>			
<b>Additional Considerations:</b>			
<b>Modification to Present Policy, Practices or Training:</b>			
<div style="text-align: right;"> <input type="checkbox"/> COP Date Signed: <u>2/13/20</u>  <input type="checkbox"/> PC Date Submitted: <u>2/13/20</u> </div>			

<b>Employee (Last Name, First, Middle)</b> Do, Andrew		<b>Serial No.</b> 43209	<b>Rank/Class</b> Police Officer II	<b>Incident No.</b> 016-19
<b>Length of Employment</b> 1 year, 7 months		<b>Current Division</b> Southeast	<b>Time in Current Division</b> 1 year, 2 months	
<b>Use of Force Review Board</b>		<b>Chief of Police</b>		<b>Police Commission</b>
<b>Tactics</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval		<b>Tactics</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval		<b>Tactics</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval
<b>Drawing and Exhibiting the Firearm</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Drawing and Exhibiting the Firearm</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Drawing and Exhibiting the Firearm</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Less-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Less-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Less-Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Non-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Non-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Non-Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Unintentional Discharge</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)		<b>Unintentional Discharge</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)		<b>Unintentional Discharge</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)
<b>Other Issues</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Other Issues</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Other Issues</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
Notes: SUSAN TORRES 32829 S. TORRES 32829 <div style="text-align: center;"> RECEIVED  FEB 18 2020  OFFICE OF THE INSPECTOR GENERAL </div> <div style="text-align: right; transform: rotate(90deg);"> RECEIVED  POLICE COMMISSION  2020 FEB 13 PM 2:54 </div>				
<b>Final Adjudication for Out of Policy/ Administrative Disapproval Finding</b> <input type="checkbox"/> Extensive Retraining <input type="checkbox"/> Notice to Correct Deficiencies <input type="checkbox"/> Personnel Complaint <input type="checkbox"/> Employee's Work History Reviewed		Notes:		

\*A Tactical Debrief shall be conducted for all Categorical Use of Force Incidents.



<b>Employee (Last Name, First, Middle)</b> Tahuete, Bryan		<b>Serial No.</b> 42780	<b>Rank/Class</b> Police Officer II	<b>Incident No.</b> 016-19
<b>Length of Employment</b> 2 years, 5 months	<b>Current Division</b> Southeast		<b>Time In Current Division</b> 0 years, 11 months	

Use of Force Review Board	Chief of Police	Police Commission
<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval	<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval	<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval
<b><u>Drawing and Exhibiting the Firearm</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Drawing and Exhibiting the Firearm</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Drawing and Exhibiting the Firearm</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Less-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Less-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Less-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Non-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Non-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Non-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Unintentional Discharge</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	<b><u>Unintentional Discharge</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	<b><u>Unintentional Discharge</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)
<b><u>Other Issues</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Other Issues</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Other Issues</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)

Notes: *J. Torres #32529*      *J. Torres #32529*

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<b><u>Final Adjudication for Out of Policy/ Administrative Disapproval Finding</u></b> <input type="checkbox"/> Extensive Retraining <input type="checkbox"/> Notice to Correct Deficiencies <input type="checkbox"/> Personnel Complaint <input type="checkbox"/> Employee's Work History Reviewed	Notes:
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